



## **DEPARTMENT OF TRANSPORTATION**

### **Office of the Secretary**

#### **14 CFR Part 250**

**Docket No. DOT-OST-2019-0025**

**RIN No. 2105-AE67**

### **Modernizing Payment of Denied Boarding Compensation**

**AGENCY:** Office of the Secretary (OST), Department of Transportation (DOT).

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** The Department of Transportation is proposing to amend its rule on oversales to allow airlines to use electronic payment medias that are equivalent to cash as an option in lieu of check or cash payment to compensate passengers who are denied boarding involuntarily due to oversales; and allow airlines to provide a mandatory written denied boarding notice in an oversales situation by electronic means upon passengers' consent, in lieu of a paper copy. This action would not impact airlines' ability to offer a consumer who is denied boarding involuntarily a choice between flight vouchers or credits and the required denied boarding compensation.

**DATES:** Comments should be filed by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** You may file comments identified by the docket number DOT-OST-2019-0025 by any of the following methods:

- ° Federal eRulemaking Portal: go to <http://www.regulations.gov> and follow the online instructions for submitting comments.

- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave., S.E., Room W12-140, Washington, D.C. 20590-0001.
- Hand Delivery or Courier: West Building Ground Floor, Room W12-140, 1200 New Jersey Ave., S.E., between 9:00 a.m. and 5:00 p.m. ET, Monday through Friday, except Federal Holidays
- Fax: (202) 493-2251.

*Instructions:* You must include the agency name and docket number DOT-OST-2019-0025 or the Regulatory Identification Number (RIN) for the rulemaking at the beginning of your comment. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

*Privacy Act:* Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment if submitted on behalf of an association, a business, a labor union, etc.). You may review DOT's complete Privacy Act statement in the *Federal Register* published on April 11, 2000 (65 FR 19477-78), or you may visit <http://DocketsInfo.dot.gov>.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or to the street address listed above. Follow the online instructions for accessing the docket.

**FOR FURTHER INFORMATION CONTACT:** Clereece Kroha or Blane A. Workie, Office of Aviation Enforcement and Proceedings, U.S. Department of Transportation, 1200 New Jersey Ave., S.E., Washington, D.C. 20590, 202-366-9342 (phone), 202-366-7152 (fax), [clereece.kroha@dot.gov](mailto:clereece.kroha@dot.gov) or [blane.workie@dot.gov](mailto:blane.workie@dot.gov) (e-mail).

## **SUPPLEMENTARY INFORMATION:**

### **Executive Summary**

#### **1. Purpose of the Deregulatory Action**

The purpose of this action is to explore additional means for U.S. and foreign air carriers to compensate passengers who are involuntarily denied boarding in an oversales situation. Currently, carriers must provide Denied Boarding Compensation (DBC) by issuing cash or checks. This NPRM proposes to allow carriers to use electronic payment methods in lieu of cash or check DBC payments. This NPRM also proposes to allow U.S. and foreign air carriers to provide a mandatory written notice to consumers explaining DBC and boarding priorities in electronic form. Currently, carriers are required to provide this notice in print format.

#### **Summary of the Major Provisions of the Deregulatory Action In Question**

This NPRM proposes to amend the following provisions in 14 CFR part 250:

(1) 14 CFR 250.5 Amount of denied boarding compensation for passengers denied boarding involuntarily.

This provision would be amended to incorporate the proposal of allowing cash equivalent electronic payments for compensating passengers who are denied boarding involuntarily.

(2) 14 CFR 250.8 Denied boarding compensation.

This provision would be amended to incorporate the proposal of allowing cash equivalent electronic payments for DBC payments, and specify certain conditions for these electronic payments to ensure that they are indeed equivalent to cash.

(3) 14 CFR 250.9 Written explanation of denied boarding compensation and boarding priorities, and verbal notification of denied boarding compensation.

This provision sets forth the written statement that carriers must provide to passengers regarding involuntarily denied boarding. This provision would be amended to incorporate the proposal to allow carriers to provide the written statement by electronic means upon passengers' consent. The written statement would also be amended to incorporate the proposal of allowing cash equivalent electronic DBC payments.

## **2. Summary of Costs and Benefits**

The proposed rule would provide regulatory relief to airlines, while maintaining aviation consumer protections for passengers. The rule would not have a significant economic impact on airlines or their passengers, and those economic impacts that are anticipated are expected to be beneficial to both airlines and passengers, and modest in magnitude.

### **Background**

To compensate for “no-shows,” many airlines overbook their scheduled flights by selling more confirmed reservations for a flight than they have seats. At times, it may also be necessary to involuntarily deny boarding to passengers holding confirmed reservations to comply with safety or operational requirements, or to make room for Federal Air Marshall, or other law enforcement personnel. The Department’s regulation on oversales, 14 CFR part 250, establishes the minimum standards for the treatment of airline passengers holding confirmed reservations who are involuntarily denied boarding (“bumped”). Among other requirements, 14 CFR 250.8 requires that U.S. and foreign air carriers must offer compensation in the form of cash or immediately negotiable check to bumped passengers. The amount of the cash or negotiable check depends on the price of the airline ticket, whether the passenger was bumped from a domestic flight or international flight, and the projected length of the delay caused by the bumping. Under DOT rules, if a passenger is bumped involuntarily, the cash or check must be

tendered on the day and place the denied boarding occurs, or, under certain circumstances, by mail or other means within 24 hours.

The Department's oversales rule was initially promulgated by its predecessor, the Civil Aeronautics Board (CAB) in 1967 (32 FR 11939, Aug. 18, 1967). In that final rule, carriers were required to tender to a passenger eligible for DBC, on the day and place the denied boarding occurs, a "draft" for the appropriate amount. The rule further provides that when a carrier arranges alternate means of transportation that departs before the draft can be prepared and tendered to the passenger, tender shall be made by mail or other means within 24 hours after the time the denied boarding occurs. In 1984, the CAB issued an interpretive amendment to the rule to make it clear that passengers involuntarily denied boarding must be paid by cash or an immediately negotiable check (49 FR 43622, Oct. 31, 1984). The amended rule retains the original rule's requirement regarding the timing of DBC payment, that DBC must be paid at the time and place of denied boarding, or tendered within 24 hours after the denied boarding occurs. However, it replaced the word "draft" as appeared in the rule with the phrase "cash or immediately negotiable check." In doing so, the CAB rebutted a carrier's argument that the undefined term "draft" can be interpreted to include carrier-issued flight vouchers. The CAB reiterated that one of the main goals of the oversales rule was to provide "prompt, effective, and adequate" compensation to bumped passengers and pointed out that the intended results of the rule, one of which being that DBC must be paid by "cash or cash equivalent", are clear and that the intent had been uniformly interpreted by the industry since 1967. The phrase "cash or immediately negotiable check" remains to be the rule as of today.

The Department recognizes that the means of money transfer offered by the banking systems and other financial institutions have evolved over the last few decades. In 1984, when

the CAB required that DBC must be paid by cash or check, an immediately negotiable check was likely the only form of cash equivalent that was widely available and accessible to the public. Since then, prepaid access payments<sup>1</sup> have been introduced to and accepted by many merchants. In addition, in recent years, electronic fund transfer<sup>2</sup> services, previously only available for transfers between financial institutions, is now available for transferring money from the account holder of a bank to an individual consumer. Further, various digital money transfer networks offered by non-banking business entities, such as *PayPal*, *Zelle*, *Square Cash*, *Google Wallet*, and *Venmo*, are becoming more and more popular among consumers due to their accessibility via mobile phone applications.

As a result of the aforementioned money storage and transfer technology evolution, various airlines have urged the Department to consider allowing them to provide DBC payments to passengers via a prepaid card or other forms of electronic funds. In 2011, in the Department's final rule titled "Enhancing Airline Passenger Protections" (76 FR 23109, Apr. 25, 2011), we responded to some carriers' comments that the Department should allow the use of prepaid cards<sup>3</sup> for DBC payments. In our response, we acknowledged the convenience and security features offered by electronic funds, but declined to implement a rule allowing use of electronic

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<sup>1</sup> "Prepaid access" is defined as access to funds or the value of funds that have been paid in advance and can be retrieved or transferred at some point in the future through an electronic device or vehicle, such as a card, code, electronic serial number, mobile identification number, or personal identification number. *See* 31 CFR 1010.100(wv).

<sup>2</sup> "Electronic fund transfer" means any transfer of funds that is initiated through an electronic terminal, telephone, computer or magnetic tape for purpose of ordering, instructing, or authorizing a financial institution to debit or credit a consumer's account. The term includes, but is not limited to: (i) Point-of-sale transfers; (ii) Automated teller machine transfers; (iii) Direct deposits or withdrawals of funds; (iv) Transfers initiated by telephone; and (v) Transfers resulting from debit card transactions, whether or not initiated through an electronic terminal. *See* 12 CFR 1005.3.

<sup>3</sup> The comments submitted by these carriers use the term "debit cards." A debit card is linked to a specific bank account, and in contrast, a prepaid card stores a specific amount of money prepaid and stored in a media and is not linked to a bank account. For the purpose of providing DBC, we believe a prepaid card is the intended form of payment referred to by these commenters.

funds as a substitute for cash or check payments because we had not had the opportunity to fully examine the potential benefits and limitations of the use of electronic funds in that rulemaking proceeding. We stated that we may explore this issue in future rulemaking. Further, in October 2017, the Department published a Notification of Regulatory Review (82 FR 45750, October 2, 2017), seeking public input on existing rules and other agency actions that are good candidates for repeal, replacement, suspension, or modification. Among the comments received, Airlines for America (A4A), the trade association for most large U.S. air carriers, suggests that the Department should eliminate the requirement that DBC be paid in cash or check, and allow airlines to make DBC payments by electronic transfer, credit or flight vouchers. A4A avers that the requirement of cash or check DBC payment is obsolete in today's society where electronic payments have become the norm. By this NPRM, we fulfill our stated intention in the 2011 final rule and take the opportunity to examine this subject fully, including issues raised by A4A in its regulatory review comment.

The CAB's 1967 final rule establishing the oversales regulation also included a provision that requires greater public disclosure of boarding procedures and passengers' rights in the event of an oversold flight. In a 1978 final rule that strengthened this disclosure requirement, CAB stated that its adoption of a more stringent public disclosure requirement was intended to afford passengers, who were otherwise generally ignorant of the rule, the opportunity to take steps to protect themselves from involuntary bumping or to verify that carriers have in fact acted in accordance with the stated priorities. See 43 FR 24277, at 24281. Under the current rule, carriers must provide a written notice explaining the computation of DBC and the carrier's boarding priority in determining which passenger(s) would be subject to involuntarily denied boarding in an oversales situation, if necessary. This notice must be provided verbatim to any

passenger who was involuntarily denied boarding, immediately following the denied boarding, and to any other persons, upon request, at (1) all airport ticket selling positions that are exclusively or jointly under the carrier's control, and (2) at boarding locations (e.g., gates).

For several decades, carriers complied with this requirement by preprinting a large quantity of pamphlets containing the written notice as prescribed by the rule, and distributing the pamphlets to each station so they would be available on demand at the ticket counters and gates. In recent years, some carriers began to use computer terminals at the ticket counters and gates to generate printed notices on demand. By doing so, carriers may avoid the cost of preprinting a large amount of pamphlets that may be rendered obsolete on a later date because the regulatorily mandated DBC maximum amounts contained in the notice are subject to inflation adjustments. It also avoids the possibility of running out of or misplacing the pamphlets at a station so all agents are able to locate and produce the document on a short notice.

In comments submitted to the aforementioned 2017 regulatory reform docket, A4A states that the rule was originally implemented long before the Internet and email existed, when airlines had to rely on paper-based forms of communication with consumers. A4A asserts that airlines' compliance with this paper-based notice requirement creates unnecessary logistical challenges and ignores the greater efficiency and more environmentally beneficial ability to deliver such notification to consumers electronically. According to A4A, airlines are required to expend considerable resources to print and distribute these written statements to consumers, including destroying existing notices and reprinting such statements each time the Department adjusts the amount of denied boarding compensation it requires. A4A recommends that the Department amend the regulation to allow carriers to provide passengers the involuntary denied boarding information explanation in an electronic format in order to modernize the delivery of such



information to consumers, to better ensure up-to-date information is provided, reduce the cost of document destruction as carriers destroy outdated documents, and eliminate paper waste.

Improvement of regulations is a continuous focus for the Department. As a part of that effort, we periodically review existing regulations to ensure that they continue to meet the needs for which they originally were designed, remain cost-effective and cost-justified. As such, and in response to A4A's comment, we undertake this rulemaking to explore the subject of eliminating the requirement for paper-based notice and allowing carriers to provide the notice electronically.

## **Notice of Proposed Rulemaking**

### **1. Methods of DBC Payment.**

As stated by CAB in 1984, one goal of the oversales rule is to ensure that carriers provide "prompt, effective, and adequate" compensation to bumped passengers. In light of the technological advancements that have taken place in money transfer, we ask the public to comment on whether expanding the scope of "cash equivalent" beyond an immediately negotiable check would still result in "prompt, effective, and adequate" compensations to bumped passengers. Is there a significant number of passengers who do not have access to electronic funds and can only access DBC payments by cash or check? If so, how can the Department ensure that all passengers affected by involuntary denied boarding, including those passengers who do not have access to electronic funds, receive "prompt and effective" DBC payments? In the event the Department finalizes a rule to allow carriers to provide DBC payments in electronic formats in lieu of cash or check payments, should the rule take effect right away or is there a need for a sunset period for the cash and check payments mandate to be eliminated? How long should the sunset period be?

Since the issuance of the 2011 final rule in which the Department declined to address the issue of allowing alternative DBC payment methods, the Department has engaged in discussions with the airline industry on this matter. These discussions with stakeholders have provided valuable information for the Department to preliminarily assess the benefits and limitations of electronic funds. With respect to benefits, we recognize that for security and administrative reasons, most, if not all, carriers may prefer to tender DBC in the form of checks instead of cash. We acknowledge that there are situations in which there is no time for the passenger to wait for a check or the carrier is unable to issue the check immediately following the denied boarding. In these situations, carriers are required to mail a check within 24 hours, but as a practical matter, consumers oftentimes would not have access to the money for many days because of the time needed for the checks to arrive at their designated addresses by mail, the likelihood that the bumped passengers may be traveling and not at their residences to receive the checks, and the time necessary for depositing the checks into their bank accounts. In contrast to checks, electronic funds oftentimes are much easier ways for consumers to access the money. For example, prepaid cards provide consumers a convenient way to immediately withdraw cash from an automated teller machine (ATM) or allow them to use the cards for purchases at retail stores and in online transactions. Similarly, electronic fund transfers via a banking system or through an intermediary platform, such as *PayPal*, provides consumers access to the money in a much faster and convenient manner. These funds are also available for online transactions. From the carriers' perspective, issuing DBC in electronic formats can facilitate a computerized and centralized DBC management system, eliminate the need to manually issue and mail checks, increase efficiency, and decrease the chance of fund mismanagement. For purpose of this rulemaking, we invite the public as well as experts in the banking industry to comment on any

other benefits of using these electronic forms of payment to issue DBC. Are there any specific distinctions among prepaid cards, and various electronic fund transfer platforms (including directly transferring funds to the passengers' bank accounts and to accounts with intermediary transfer services such as *PayPal*) that are pertinent in making a form or forms of DBC payment more preferable than others? What type or types of payment are most likely accessible to the majority of consumers? Should the carriers be required to provide payments in cash or check if the offer of electronic payments are rejected by a passenger for the reason that it is inaccessible to that individual? What are the estimated administrative costs to carriers for managing these electronic payment systems, including administration fees and services fees paid to financial institutions or intermediary fund transfer entities, if any? How are these costs compared to the cost of managing cash or check DBC payments at both headquarters and station levels?

With respect to limitations of electronic DBC payments, we found that, compared to cash or check payments, many prepaid cards have shorter validity periods than a typical check instrument; some cards impose various fees on users; and when withdrawing cash with the cards at ATMs, there are often withdrawal limits, usage fees, and other conditions attached. For commonly known electronic fund transfer methods, we are not aware of any fees imposed on the recipients of the funds. With respect to fees imposed on the providers of the funds (the airlines), we lack information on whether they exist and, if so, in what format. We welcome public comments on this issue. As our goal is to find means of payment that are equivalent to cash or check and, at the same time, increases efficiency and convenience, in this NPRM, we propose certain conditions that carriers must meet if they choose to offer electronically stored or transferred funds in lieu of cash or check DBC payments. These conditions are intended to eliminate characteristics or fees associated with electronically stored or transferred funds that

may render the payment less than its value in U.S. dollars. We seek comments on whether these proposed conditions are necessary to ensure passengers' rights to adequate and prompt DBC payments, and whether instead of imposing these conditions, a performance-based standard that merely requires the DBC payment to be "cash equivalent" would be sufficient to achieve our goal. Would a performance-based standard without specific conditions as the ones proposed here be more appropriate to adapt to the ever-changing technology in fund payment and transfer? Would a performance-based standard without conditions more likely cause confusion and uncertainty regarding compliance among carriers?

*(1) Validity Period and Residual Value*

The current rule does not have a specific minimum validity period requirement for DBC payments in the form of checks. According to Article 4 of the Uniform Commercial Code, a bank receiving the check may, but is not obligated to, pay a check that is more than six months old. *See* U.C.C. § 4-404 (2002). As many prepaid cards have an expiration date, in the NPRM, we propose that to be considered cash equivalent, an electronic fund's validity period must be no less than 90 days from the date the passenger receives the fund, or from the date the fund is activated, if activation is required, whichever gives the longer validity period. We seek information on what the common validity period of widely available electronic funds, such as prepaid cards, are, if any. If it is shorter than the typical check's validity period (no longer than six months), should the carriers be required to extend the validity period of the cards to match that of a check? Are there any technical issues with extending a card's validity period to six months or more? Are there any validity periods imposed on funds transferred via platforms owned and operated by other intermediary entities such as *PayPal*? In relation to the validity

period of the funds, if there is any value left at the end of the validity period, should the carriers be required to provide the fund to consumers upon request?

*(2) Amount of DBC issued by electronic methods*

14 CFR 250.5 specifies the amount of DBC a carrier must provide to an eligible passenger following an involuntary denied boarding incident. The amount of DBC varies depending on whether the flight from which the passenger was bumped was a domestic or international flight, the expected delay caused by the denied boarding, and the amount of fare paid by the passenger. In addition to the prescribed calculation formula, section 250.5 specifies that carriers are not required to pay above a certain amount though carriers can always choose to do so. In this NPRM, we are not proposing any changes to the methods of calculating the amount of DBC or the amount above which carriers are not required to pay (currently at \$675 and \$1,350). However, considering that some prepaid funds and/or electronically transferred funds may incur usage fees for consumers when they attempt to access cash via ATMs, we are proposing to require carriers to take into account these usage fees when determining the amount that must be available from the electronic funds. For example, withdrawing cash from an ATM with a prepaid card may incur usage charges. Some bank-owned ATMs charge usage fees solely to users who are not customers of the bank where the ATM is installed; some ATM usage fees are charged to all users. Further, many ATMs impose a limitation on the amount of cash one can withdraw at a time or daily, and as a result, a consumer may have to make several withdrawals to access the full amount of DBC and therefore, paying multiple usage fees. As such, if a passenger is entitled to a DBC payment of \$1,350 that is provided in a prepaid card, and the card provided to the passenger has a \$300 limit on the amount that can be withdrawn at one time and a \$5 fee for each withdrawal, then the carrier would need to increase the amount of DBC payment on the

card by \$25. The example of \$25 or ATM usage fees would cover up to five withdrawals at \$5 per withdrawal. Are carriers able to provide prepaid cards that can be used at most ATMs without usage charges (e.g., carriers prepay for the anticipated charge)? If not, is there a reasonable amount to cover withdrawal service fees for most instances, or would a determination need to be made on a case by case basis?

In addition to the amount specific to cover ATM usage fees, our proposal also prohibits carriers from imposing on consumers any other usage-related or any maintenance-related charges for the prepaid cards.<sup>4</sup> Our proposal does not intend to require carriers to cover all the fees that can be charged to a prepaid card, such as cash reload fee, or card-to-card transfer fee, but we intend to require carriers to cover any fees that a consumer must pay in order to maintain the validity of the cards.<sup>5</sup> Examples of these fees are weekly or monthly maintenance fees, non-activity fees, balance inquiry fees, and customer service call surcharges. Our goal is to ensure that passengers receive the same amount of DBC payment through electronic format as if they are paid by cash or check. We seek public comment on commonly charged fees that carriers should be responsible for in order to achieve that goal.

Further, because DBC payments often occur in the context of international travel, we specifically note that our proposed additional amount for DBC payment by electronic format to cover usage fees such as ATM fees does not intend to cover any foreign exchange fees that usually occur when a card issued by a U.S. entity is used at an ATM overseas for cash withdrawal or for purchase in foreign currency. This is consistent with the current rule that

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<sup>4</sup> Examples of common fees for prepaid cards can be found on a webpage posted on the Consumer Financial Protection Bureau's website lists. See, <https://www.consumerfinance.gov/consumer-tools/prepaid-cards/understand-fees/>.

<sup>5</sup> Because we are proposing that an electronic cash equivalent payment should be valid for at least 90 days, carriers would be responsible for 90 days of maintenance fees for a card to the extent there is such a fee.

requires cash or cash equivalent to be provided in U.S. dollars and does not require the DBC amount to cover any foreign exchange fees should the consumers wish to exchange the U.S. dollars into another currency.

Under the proposal, DBC payments that are transferred electronically to a passenger's bank account would presumably become accessible for cash withdrawal with the passenger's own bank debit card. For electronic fund transfers to intermediary accounts, such as *PayPal*, are there any convenient ways to get cash from the account? If not, is the lack of easy and immediate access to cash a big concern for consumers? Are there fees charged to the recipients for the most commonly used means of electronic fund transfer? Should the Department prescribe the specific means of electronic fund transfer that carriers may use to pay DBC, or, is a performance-based standard within which carriers are free to choose the preferred means of electronic fund transfer a better option?

*(3) Timeliness of issuing DBC by electronic means.*

To ensure that passengers who are denied boarding involuntarily receive the DBC payments that they are entitled to in a timely manner, the current rule, in section 250.8 requires that the DBC payment must be tendered to passengers on the day and at the place where the denied boarding occurred, or, in the event that carriers arrange alternate transportation that departs before the DBC payment can be prepared and tendered, carriers must tender the payment by mail or other means within 24 hours of the denied boarding. In this NPRM, we are proposing to maintain this requirement with respect to DBC payments made by cash, check, and cash equivalent provided electronically. We are proposing that tendering payment within 24 hours of the denied boarding may include but is not limited to mailing a check or prepaid card to a passenger within 24 hours of the denied boarding or initiating a fund transfer to the passenger's

account within 24 hours of the denied boarding. Is this 24-hour requirement reasonable and adequate for the purpose of tendering electronic cash equivalent?

*(4) Type of Electronic Funds and Their Usage in Commerce*

In this NPRM, we are proposing to allow any type of electronic payment that is considered “cash equivalent.” To be equivalent to cash, we consider that the payment must be widely accepted in commerce for purchases. For example, a prepaid card can be an open-loop or closed-loop card. An open-loop prepaid card is a card with a credit card network logo on it that can be used for purchase at any location that accepts that brand. Examples of the most commonly accepted credit card networks are Visa, MasterCard, American Express, and Discover. All prepaid cards that bear one of the major networks’ logos can also be used at most ATMs for cash withdrawal. In contrast, a closed-loop card is a card that can only be used for purchase at a specific merchant or a group of merchants and they usually cannot be used to withdraw cash at an ATM. A typical example of closed-loop card is a gift card for a particular store brand. In the NPRM, we propose that the prepaid card provided to consumers as DBC payment must be an open-loop card so consumers are not restricted with a particular merchant when using the fund for purchase and consumers are able to access cash with the card if so preferred. Furthermore, we note that most ATMs are connected to interbank networks, enabling consumers to withdraw and deposit money from machines not belonging to the bank where they have their accounts or not in the country where their accounts are held (enabling cash withdrawals in local currency). As such, we are also including in our proposal prepaid card payments that allow consumers to withdraw cash from any major interbank network that is widely available, such as NYCE, PULSE, PLUS, and Cirrus, as a permissible type of payments for DBC. We ask for comments on whether our proposal is sufficient to ensure that the



electronic payments are cash equivalent and can easily be used to withdraw cash at airports and other locations.

*(5) Disclosure and Compliance with Regulation E*

The Consumer Financial Protection Bureau (CFPB) rule implementing the Electronic Fund Transfer Act, 12 CFR part 1005 (Regulation E)<sup>6</sup>, along with its appendixes (Model Disclosure Clauses and Forms and CFPB Official Interpretations), prescribes various disclosure requirements for, among other things, “electronic fund transfers”<sup>7</sup> and “general-use prepaid card.”<sup>8</sup> To the extent that a carrier provides DBC payment by a method within the meaning of “electronic fund transfer” as defined in Regulation E, we expect that carriers (which are under the Department’s jurisdiction) and/or the financial institutions or other entities they use to provide or facilitate the DBC payments (which may fall under the jurisdiction of CFPB) comply with the requirements of Regulation E. Consistent with the goal of Regulation E and our authority under 49 U.S.C. 41712 against unfair and deceptive practices, in this NPRM, we propose to require that carriers provide conspicuous written disclosure of all material restrictions and conditions associated with using and maintaining the card at the time the card is tendered to the passenger. Examples of such conditions would be expiration date, activation requirement, pin requirement, ATM withdrawal fees, daily withdrawal amount limit, and network limit, etc.

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<sup>6</sup> The Electronic Fund Transfer Act establishes the basic rights, liabilities, and responsibilities of consumers who use electronic fund transfer and remittance transfer services and of financial institutions or other persons that offer these services. The primary objective of the Act and 12 CFR Part 1005 is the protection of individual consumers engaging in electronic fund transfers and remittance transfers. *See* 12 CFR 1005.1.

<sup>7</sup> For Regulation E’s definition for “electronic fund transfer,” see FN 2.

<sup>8</sup> 12 CFR Part 1005 defines “general-use prepaid card” as a card, code, or other device that is issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in a specified amount, whether or not that amount may be increased or reloaded, in exchange for payment; and redeemable upon presentation at multiple, unaffiliated merchants for goods or services, or usable at automated teller machines. *See* 12 CFR 1005.20(a)(3). Further, the rule specifically states that its requirements covering “general-use prepaid cards” exclude any cards, code, or device that is not marketed to the general public. As such, it is our preliminary understanding that carrier-issued DBC payment in the form of prepaid card may not be covered by 12 CFR 1005.20 if it is not marketed to the general public. It may still have to comply with other sections of Regulation E.

We encourage individuals and entities having pertinent familiarity with Regulation E to provide input on its applicability towards any DBC payment methods proposed in this notice, and whether there are any difficulties for carriers and others to comply with both Regulation E and our proposals. At this time, we are not proposing to prescribe the manner of written disclosure carriers must use to notify passengers of the limits and restrictions associated with the cards, nor are we proposing the specific language of the disclosure. Consistent with our proposal to allow carriers to provide written notice of denied boarding compensation and boarding priority by electronic means, which will be discussed below, we also propose to allow carriers to provide disclosures of the limits and restrictions on electronic DBC payment by electronic means upon consumers' consent. We ask public input on whether we should require this disclosure to be incorporated into the written notice that carriers are required to provide under section 250.9, when applicable, or whether it is better to provide a standalone disclosure document.

As a final matter for this subject, we emphasize that our proposal would allow carriers to choose from cash, check or cash equivalent electronic payments as a form of mandatory denied boarding compensation payments. Further, this proposal would not impact the ability of carriers to offer consumers a choice between flight vouchers or credits and the mandatory denied boarding compensation payments. For clarification purpose, we propose to revise the rule text in section 250.5(c) to make it clear that airlines may offer consumers the option of choosing either free or reduced rate air transportation or the required DBC payment.

## **2. Denied Boarding Notice in Electronic Format**

The requirement for carriers to provide a written notice regarding denied boarding rights was included in the original oversales final rule in 1978. The stated goal is to ensure that passengers affected by oversales understand what they are entitled to and are able to make an

informed choice between accepting DBC or any other compensation offers carriers may present.

In this NPRM, we propose to allow carriers to provide this notice electronically, such as by display on an airline tablet, or by email or text message with a link to the actual notice on the Internet if the passenger has a device with him or her on which to access this information.

However, in our proposal, if a passenger does not consent to receive this notice in electronic format and instead, requests a print copy, carriers must produce the print copy. Our concern with eliminating the requirement of providing printed notice upon request is that the passenger may want not only to read the notice and understand his or her rights in a timely manner before making a decision about denied boarding compensation, but also to retain a copy for further review at a later time. We assume that most if not all carriers are able to produce a print copy using computer terminals at the gates or counters, as many of them already do currently. We solicit comment regarding the benefit and costs of proposing to require carriers to provide printed notice to the passenger upon request. We also request information regarding the availability of email or text messages to passengers when they travel.

With respect to the format of the electronic notice, we ask whether carriers may provide emails or text messages that include a link to the actual notice on a webpage that is a part of the carriers' websites, or whether carriers should be required to provide the text of the notice via emails. Is there any substantial difference between these two formats that affects passengers' access to the content of the notice? For carriers that have mobile applications available for consumers to download on their mobile devices, is including the notice in the mobile applications sufficient for the purpose of oversales disclosure? Passengers with disabilities are normally not subject to involuntary denied boarding as airlines boarding priority rules often take into account a passenger's disability, and the current rule does not require carriers to provide the

written notice in an accessible format for these passengers. However, we note that the Department's rule implementing the Air Carrier Access Act, 14 CFR part 382, requires that carriers' primary websites must conform to certain accessibility standards<sup>9</sup> by December 12, 2016, and that requirement would cover the denied boarding notice published on carriers' websites. We view this as an additional benefit of allowing carriers to provide denied boarding notice electronically—by providing the notice in accessible electronic format, passengers with disabilities who under the current rule may not have access to the content of the notice would gain access without assistance.

## **REGULATORY ANALYSES AND NOTICES**

### *A. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

This proposed rule is not a significant regulatory action under section 3(f) of E.O. 12866 (58 FR 51735, October 4, 1993), Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011), Improving Regulation and Regulatory Review. Accordingly, the Office of Management and Budget (OMB) has not reviewed it under that Order. It is also not significant within the meaning of DOT regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034 (February 26, 1979)).

This proposed rule is expected to provide regulatory relief to airlines, while at the same time maintaining aviation consumer protections for passengers. The proposed rule would amend the denied boarding compensation requirements of sections 250.5 and 250.8 to allow carriers to

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<sup>9</sup> 14 CFR 382.43(b) requires carriers' primary websites to conform to all Success Criteria and all Conformance Requirements from the World Wide Web Consortium (W3C) Recommendation 11 December 2008, Web site Content Accessibility Guidelines (WCAG) 2.0 for Level AA.

use cash equivalent electronic payment in lieu of cash or check to provide compensation to passengers that are denied boarding involuntarily and are eligible for denied boarding compensation. The proposed rule would also amend the requirements of section 250.9 to allow carriers to provide the mandatory written explanation of denied boarding compensation by electronic means in lieu of a paper copy with the consent of the passenger. The proposed rule would not impact the existing requirements regarding denied boarding compensation eligibility for passengers that are denied boarding involuntarily, or the existing requirements regarding the methods of calculating the amount of compensation for passengers that are denied boarding involuntarily.

The primary entities that would be affected by this proposed rule are U.S. and foreign carriers to which the requirements of 14 CFR part 250 apply, and passengers with confirmed reserved space on scheduled flight segments operated by those carriers and that are denied boarding involuntarily and are eligible for denied boarding compensation. The requirements of 14 CFR part 250 apply to carriers that operate scheduled flight segments using an aircraft that has a designed passenger capacity of 30 or more passenger seats, operating in interstate air transportation or providing foreign air transportation on flight segments originating in the United States. It is currently estimated that there are approximately 45 U.S. carriers and 65 foreign carriers to which the requirements of 14 CFR part 250 apply.

Airlines are required to pay compensation to certain passengers who are involuntarily denied boarding from flights on which they hold confirmed reservations. The amount of the compensation depends on the length of delay to their destination. The practice, known as “bumping” or “denied boarding,” happens occasionally when there are more passengers scheduled to fly on an airplane than available seats. In rare circumstances, this practice may be

needed to accommodate a Federal Air Marshall on the plane. When such an oversales situation occurs, airlines are first required to ask if there are passengers willing to give up their seats voluntarily in exchange for compensation, which could include a variety of incentives including money or flight vouchers, for example. Passengers who choose to give up their seat are considered to have been “voluntarily denied boarding.” If there are not enough volunteers available, any other additional passenger denied boarding is considered to have been “involuntarily denied boarding.”

Currently, airlines are required to offer cash or check for compensation to passengers who are involuntarily denied boarding and are eligible for compensation, in the amount of 200 percent of the passenger’s one-way fare to their destination or first stopover, up to \$675, if the delay is 1 to 2 hours (1 to 4 hours in foreign air transportation where involuntary denied boarding takes place at a U.S. airport), and 400 percent of the fare, up to \$1,350, if the delay is over 2 hours (over 4 hours in foreign air transportation where involuntary denied boarding takes place at a U.S. airport). Airlines may offer consumers a choice between the required denied boarding compensation and free or reduced fare air transportation compensation at equal to or greater value (in addition to finding alternate transportation for the denied flight). However, the passenger involuntarily denied boarding may decline this transportation benefit in favor of cash or check. Airlines often do not hold cash at boarding locations and handle the compensation by mailing a check within 24 hours of the time of denied boarding.

Table 1 below provides a summary of the annual reported number of involuntarily denied boardings for the most recent five year period for which data was available (calendar years 2013 through 2017).

**Table 1: Passengers Involuntarily Denied Boarding**

Calendar Year	Number of Reporting Carriers	Total Enplaned Passengers	Passengers Involuntarily Denied Boarding						
			Not Eligible for Compensation		Eligible for Compensation			TOTAL	
			Number	Percent of Total	Number	Percent of Total	Rate per 10,000 Passenger Enplanements	Number	Rate per 10,000 Passenger Enplanements
2013	16	620,515,005	14,642	26%	42,354	74%	0.68	56,996	0.92
2014	14	601,733,197	14,330	28%	35,957	72%	0.60	50,287	0.84
2015	14	645,055,901	17,801	36%	31,767	64%	0.49	49,563	0.77
2016	12	660,618,265	16,724	41%	24,402	59%	0.37	41,126	0.62
2017	12	680,889,723	8,680	37%	14,543	63%	0.21	23,223	0.34
<b>ANNUAL AVERAGE</b>			<b>14,435</b>	<b>33%</b>	<b>29,805</b>	<b>67%</b>	<b>0.46</b>	<b>44,239</b>	<b>0.69</b>

**Source:** U.S. Department of Transportation. Bureau of Transportation Statistics. Data from Form 251 "Report of Passengers Denied Confirmed Space." Data available at: <https://www.bts.gov/denied-confirmed-space> (accessed May 4, 2018).

As presented in Table 1, over the most recent five year period, those U.S. carriers meeting the reporting requirement threshold<sup>10</sup> for oversales data recorded an average of approximately 45,000 involuntarily denied boardings annually, with the number steadily decreasing throughout this period from a high of 57,000 in 2013 to a low of 23,000 in 2017. Over the same time period, total passenger enplanements for these reporting carriers (excluding inbound international service, to which the oversales regulations are not applicable) have increased from 621 million in 2013 to 681 million in 2017, resulting in an even greater decrease in the rate of involuntarily denied boardings per 10,000 passenger enplanements, from 0.92 in 2013 to only 0.34 in 2017.<sup>11</sup>

<sup>10</sup> For the five years presented in the table, the reporting requirement threshold was U.S. airlines with at least 1.0% of total domestic scheduled-service passenger revenues. As of 2018, the reporting requirement threshold is U.S. airlines with at least 0.5% of total domestic scheduled-service passenger revenues, resulting in a somewhat higher number of reporting carriers (17 reporting carriers as of April 2018).

<sup>11</sup> U.S. Department of Transportation. Bureau of Transportation Statistics. Data from Form 251 "Report of Passengers Denied Confirmed Space." Data available at: <https://www.bts.gov/denied-confirmed-space> (accessed May 4, 2018).

As also presented in Table 1, only about two-thirds of total involuntarily denied boardings are eligible for compensation and therefore would potentially be affected by the proposed rule. The remaining one-third of involuntarily denied boardings are not eligible for compensation, and therefore would not be affected by the proposed rule.<sup>12</sup> Over the most recent five year period, there were an average of 30,000 involuntarily denied boardings eligible for compensation annually, again with the number steadily decreasing throughout this period from a high of 42,000 in 2013 to a low of 15,000 in 2017. Early indications from data available for the first 6 months of 2018 show a continued decline in the number of involuntarily denied boardings.<sup>13</sup>

The number of carriers that are required to report oversales data to the Department on Form 251 (17 U.S. carriers as of April 2018) represent only a portion of the estimated number of carriers to which the oversales requirements of 14 CFR part 250 apply (45 U.S. carriers, and 65 foreign carriers). However, because this smaller number of reporting carriers are the top-ranked U.S. carriers in terms of domestic scheduled-service passenger revenues, they are believed to represent a disproportionately large share of the total involuntarily denied boardings that occur

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<sup>12</sup> The reasons for which a passenger who is involuntarily denied boarding would not be eligible for compensation are enumerated in section 250.6, which remains unchanged in the proposed rule. These reasons include: receiving comparable transportation that is scheduled to arrive within one hour of the original flight; receiving seating at no extra charge in a class or section of the aircraft different than that specified on the ticket, and receiving an appropriate refund if the fare charged in the new class or section is lower than that for the original ticket; failing to comply with ticketing, check-in, or reconfirmation procedures; an aircraft of smaller capacity is substituted for the original aircraft for operational or safety reasons; or an aircraft of 60 or fewer seats has weight/balance restrictions for operational or safety reasons.

<sup>13</sup> U.S. Department of Transportation. Office of Aviation Enforcement and Proceedings. “Air Travel Consumer Report.” October 2018. Page 41. Available at: <https://www.transportation.gov/sites/dot.gov/files/docs/resources/individuals/aviation-consumer-protection/323346/october2018atcr.pdf> (accessed on November 13, 2018). For the 6 months of January through June of 2018, 17 reporting airlines recorded a total of only 4,685 involuntarily denied boardings. During the same 6-month period in 2017, 12 reporting airlines recorded 17,757 involuntarily denied boardings, nearly four times as many, despite the smaller number of 12 airlines meeting the reporting requirement threshold for 2017 (U.S. airlines with at least 1.0% of total domestic scheduled-service passenger revenues), as compared to larger number of 17 airlines meeting the reporting threshold for 2018 (U.S. airlines with at least 0.5% of total domestic scheduled-service passenger revenues).



among the full population of the estimated 45 U.S. carriers and 65 foreign carriers to which the oversales requirements of 14 CFR part 250 apply. Therefore, the data presented above from the reporting carriers are still believed to be reasonably representative in describing the extent to which passengers that are involuntarily denied boarding and are eligible for compensation would potentially be affected by the proposed rule.

Overall, the information presented above supports the conclusion that the maximum expected number of passengers traveling on U.S. carriers that would experience any potential impact from the proposed rule is very limited (only 0.0021% of enplanements in 2017), has been steadily decreasing over the past several years, and appears to be continuing that trend based on data thus far available for 2018. The Department does not require foreign air carriers to report the number of passengers who are involuntarily denied boarding on their outbound international flights from the U.S., and therefore such data are unavailable. However, anecdotal evidence suggests that among foreign carriers the rate of involuntarily denied boardings, and the percentage of involuntarily denied boardings that are eligible for compensation, are generally comparable to those of U.S. carriers.

Passengers denied boarding voluntarily receive compensation in a variety of forms, including through electronic payment methods. Making cash equivalent electronic payment (with appropriate consumer protections) available to the airlines for involuntary denied boarding compensation will expand the flexibility that already exists in the market. While offering this flexibility and greater choice to the airlines, the proposed rule ensures passengers are protected by specifying cash equivalent electronic payment, and by limiting the extent to which certain fees sometimes associated with cash equivalent electronic payment can be imposed.

Under the proposed amendments to the requirements of section 250.9 that a written explanation of denied boarding compensation be furnished to passengers that are denied boarding involuntarily, carriers would be allowed to furnish this notice by electronic means with the consent of the passenger. It is anticipated that carriers would realize a cost savings from this proposed amendment. These cost savings are expected to result from reductions in the number of hardcopy printed written statements that would be furnished by carriers to passengers, and the associated cost savings from reductions in paper, printing, distribution, and storage. The magnitude of these potential costs savings to carriers cannot be estimated, in part because under the proposed rule the decision by a carrier to furnish the written statement by electronic means is discretionary, as is the decision by a passenger to choose an electronic version of the written statement when one is offered by a carrier rather than a hardcopy printed version.

Both proposals are expected to provide modest cost savings to airlines from reductions in costs of handling and processing cash and checks, and reductions in costs of printing and distributing hardcopy printed statements. The decision by an airline to offer cash equivalent electronic payment, or an electronic version of written explanation of denied boarding, is discretionary. Therefore, it is expected that an airline would only adopt these options to the extent that they result in net cost savings. Because of the discretionary nature of these choices, the total potential cost savings of these proposals to airlines cannot be estimated. However, due to the relatively small number of passengers denied boarding involuntarily and eligible for compensation, the cost savings to airlines are expected to be modest. Nonetheless, recent comments provided by the airline industry indicate that carriers do believe that they would realize cost savings from being allowed the option to provide cash equivalent electronic payment

for denied boarding compensation in lieu of cash or check, and from being allowed the option to furnish the written explanation of denied boarding by electronic means.<sup>14</sup>

*B. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs)*

This proposed rule is expected to be an E.O. 13771 deregulatory action. Details on the estimated cost savings of this proposed rule can be found in the rule's economic analysis.

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601 et seq.) requires Federal agencies to consider the effects of their regulatory actions on small businesses and other small entities, and to minimize any significant economic impact. When an agency issues a rulemaking proposal, the RFA requires the agency to “prepare and make available for public comment an initial regulatory flexibility analysis” which will “describe the impact of the proposed rule on small entities” (5 U.S.C. 603(a)). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

The primary entities that would be affected by this proposed rule are carriers to which the requirements of 14 CFR part 250 apply, and passengers with confirmed reserved space on scheduled flight segments operated by those carriers and that are denied boarding involuntarily and are eligible for denied boarding compensation. Airline passengers are not considered small entities because they do not meet the definition of a small entity in Section 601 of the RFA. Under 14 CFR 399.73, for the purposes of the Department's implementation of the RFA, a carrier is a small business if it provides air transportation exclusively with small aircraft, defined

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<sup>14</sup> “Comments of Airlines for America. Part Two: Proposals for Repeal or Amendment of Specific DOT Economic Regulations.” December 1, 2017. Docket ID number DOT-OST-2-17-0069-2751. Pages 64-65. December 4, 2017. Available at: <https://www.regulations.gov/contentStreamer?documentId=DOT-OST-2017-0069-2751&attachmentNumber=1&contentType=pdf> (accessed May 2, 2018).

as any aircraft originally designed to have a maximum passenger capacity of 60 seats or less or a maximum payload capacity of 18,000 pounds or less.

The requirements of 14 CFR part 250 apply to carriers that operate scheduled flight segments using an aircraft that has a designed passenger capacity of 30 or more passenger seats, operating in interstate air transportation or providing foreign air transportation on flight segments originating in the United States. It is currently estimated that there are approximately 45 U.S. carriers and 65 foreign carriers to which the requirements of 14 CFR part 250 apply. Of these, there may be some that qualify as a small business according to the Department's size standard under 14 CFR 399.73 (exclusively using aircraft of 60 seats or less). However, the Department believes that the number of such carriers is very small. For example, based April 2018 aircraft registration data from the Federal Aviation Administration for manned-aircraft, less than one percent of registered aircraft (2,054 of 294,387 total aircraft) are aircraft designed with a capacity of 30 to 60 passengers seats. There are also very few foreign carriers that fly to and from the United States that provide air transportation only with small aircraft of 60 seats or less. Given the relatively small number of aircraft that fall within the size range of interest, and the small number of foreign carriers believed to operate only with aircraft of 60 seats or less, the Department believes that there would be very few carriers that are both subject to 14 CFR part 250 and that are providing air transportation exclusively with small aircraft with a maximum passenger capacity of 60 seats or less or a maximum payload capacity of 18,000 pounds or less. Therefore, the Department believes that the proposed rule will not have an impact on a substantial number of small entities.

As described earlier, due to the relatively small number of passengers that are denied boarding involuntarily and that therefore may be affected by the proposed rule, the potential cost

savings to airlines of the proposed rule are expected to be modest, and relative to the gross revenues or profits of any affected airlines would not constitute a significant economic impact.

Accordingly, the Department certifies that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. The Department invites comment on this certification and on the analysis presented in support of it.

*D. Executive Order 13132 (Federalism)*

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (“Federalism”). This notice does not propose any provision that: (1) has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts State law. States are already preempted from regulating in this area by the Airline Deregulation Act, 49 U.S.C. 41713. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

*E. Executive Order 13084*

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (“Consultation and Coordination with Indian Tribal Governments”). Because none of the options on which we are seeking comment would significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13084 do not apply.

#### *F. Paperwork Reduction Act*

This NPRM proposes a new collection of information that would require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 49 U.S.C. 3501 et seq.). Under the Paperwork Reduction Act, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the Federal Register providing notice of the proposed collection of information and a 60-day comment period, and must otherwise consult with members of the public and affected agencies concerning the proposed collection.

The collection of information proposed here is a requirement that carriers choosing to issue DBC by prepaid cards, electronic fund transfer, or other cash equivalent methods provide conspicuous written disclosure to passengers about any restrictions and limitation on the use and maintenance of the funds. The title, a description of the respondents, and an estimate of the annual recordkeeping burden are set forth below:

REQUIREMENT FOR CARRIERS TO PROVIDE WRITTEN DISCLOSURE ON LIMITS AND RESTRICTIONS OF ELECTRONIC PAYMENTS THAT ARE CASH EQUIVALENT OFFERED AS DENIED BOARDING COMPENSATION.

Respondents: U.S. carriers that operate scheduled passenger service using an aircraft that has a designed passenger capacity of 30 or more passenger seats, and foreign air carriers that operate scheduled passenger service to and from the United States using an aircraft that has a designed passenger capacity of 30 or more passenger seats.

Number of Respondents: 110 (45 U.S. carriers and 65 foreign carriers; assuming all U.S. and foreign carriers covered under 14 CFR part 250 choose to provide DBC by electronic payments that are cash equivalent).

Estimated Annual Burden on Respondents: 3,125 hours per year for all respondents. This estimate is based on an average of approximately 45,000 passengers that were involuntarily denied boarding annually by reporting carriers<sup>15</sup> in the last five years between 2013 and 2017, among which an average of 67 percent were legally eligible for compensation, averaging 30,000. According to data collected by the Department, these reporting carriers' combined annual U.S.-originating passenger enplanements counted for approximately 80 percent of the total annual enplanements for U.S.-originating passengers carried by all U.S. and foreign carriers. Based on this data, we estimate that the total number of passengers that were denied boarding annually by all carriers subject to Part 250 and are legally entitled to DBC to be 37,500 (80 percent of which were denied boarding by reporting carriers and 20 percent by all other carriers)<sup>16</sup>. We estimate an average burden of 5 minutes for the disclosure required by this proposal per passenger denied boarding involuntarily. The total estimated annual burden on all respondents would be 37,500 x 5 minutes = 3,125 hours.

Frequency: Disclosure is required each time a carrier provides DBC with an electronic DBC payment to a passenger who was denied boarding involuntarily.

The Department invites interested persons to submit comments on any aspect of each of these two information collections, including the following: (1) The necessity and utility of the information collection, (2) the accuracy of the estimate of the burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) ways to minimize the burden of collection without reducing the quality of the collected information. Comments

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<sup>15</sup> For calendar years prior to 2018, reporting carriers for the purpose of submitting oversales data to the Department pursuant to 14 CFR 250.10 were U.S. carriers that accounted for at least 1 percent of domestic scheduled passenger revenue. The list of reporting carriers were identified by BTS through the publication of reporting technical directives.

<sup>16</sup> The Department does not collect oversales data from smaller U.S. carriers that do not qualify as reporting carriers and foreign carriers, and we estimate that the actual percentage of passengers involuntarily denied boarding to be much smaller by the non-reporting U.S. carriers and by foreign carriers at U.S. airports.

submitted in response to this notice will be summarized or included, or both, in the request for OMB approval of these information collections.

*G. Unfunded Mandates Reform Act*

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this notice.

*H. National Environmental Policy Act*

The Department has analyzed the environmental impacts of this proposed action pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, Procedures for Considering Environmental Impacts (44 FR 56420, Oct. 1, 1979). Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). See 40 CFR 1508.4. In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. *Id.* Paragraph 4.c.6.i of DOT Order 5610.1C categorically excludes "[a]ctions relating to consumer protection, including regulations." The purpose of this action is to explore additional means for U.S. and foreign air carriers to compensate passengers who are involuntarily denied boarding in an oversales situation and allow carriers to use electronic payment methods in lieu of cash or check DBC payments. The Department does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

Issued this 20<sup>th</sup> day of March, 2019, in Washington D.C.



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Elaine L. Chao  
Secretary of Transportation

## List of Subjects

### *14 CFR Part 250*

Air Carriers, Consumer Protection, Reporting and Recordkeeping Requirements.

For the reasons set forth in the preamble, the Department proposes to amend title 14 CFR Chapter II as follows:

#### PART 250 – OVERSALES [AMENDED]

1. The authority citation for 14 CFR Part 250 continues to read as follows:

Authority: 49 U.S.C. 329, and chapters 401102, 41301, 41708, and 41712.

2. Amend § 250.5 by revising paragraph (c) to read as follows:

**§ 250.5 Amount of denied boarding compensation for passengers denied boarding involuntarily.**

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(c) Carriers may offer to consumers the option of choosing between free or reduced rate air transportation as a form of denied boarding compensation and the required cash, check, or cash equivalent electronic payments due under paragraphs (a) and (b) of this section, if—

- (1) The value of the transportation benefit offered, excluding any fees or other mandatory charges applicable for using the free or reduced rate air transportation, is equal to or greater than the cash/check/cash equivalent electronic payment otherwise required;
- (2) The carrier fully informs the passenger of the amount of cash/check/cash equivalent electronic compensation that would otherwise be due and that the passenger may decline the transportation benefit and receive the cash/check/cash equivalent electronic payment; and
- (3) The carrier fully discloses all material restrictions, including but not limited to, administrative fees, advance purchase or capacity restrictions, and blackout dates applicable to the offer, on the use of such free or reduced rate transportation before the passenger decides to give up the cash/check/cash equivalent electronic payment in exchange for such transportation. (See also §250.9(c)).

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3. Amend § 250.8 by revising paragraphs (a) and (b), and adding new paragraph (c) to read as follows:

**§ 250.8 Denied boarding compensation.**

(a) Every carrier shall tender to a passenger eligible for denied boarding compensation, on the day and place the denied boarding occurs, except as provided in paragraphs (b) and (c), cash, an immediately negotiable check, or electronic payments that are equivalent to cash for the appropriate amount of compensation provided in section 250.5. Compensation paid by electronic payments that are cash equivalent shall be in the amounts described in sections 250.5(a) and 250.5(b), plus an additional amount, as appropriate, to cover potential usage charges described in paragraph (d).

(b) Where a carrier arranges for the passenger's convenience, alternate means of transportation that departs before payment can be given to the passenger, tender shall be made within 24 hours after the time the denied boarding occurs. Tendering funds includes but is not limited to sending a check or prepaid card by mail, initiating an electronic transfer of funds to a passenger's account and sending an email or text message with link and instructions to access to funds.

(c) Any electronic payments offered for denied boarding compensation as equivalent to cash must satisfy the following requirements:

(1) The electronic fund must be valid for at least 90 days from the date the fund is tendered to the passenger who was involuntarily denied boarding, or from the date the fund is activated if activation is required, whichever is later;

(2) Any electronic fund provided to consumers as cash equivalent for DBC payment must be a product that is widely accepted by major payment networks for purchases and must be available for cash withdrawal on major ATM networks;

(3) The electronic fund must not impose on consumers maintenance-related or other usage-related charges during the validity period as required by paragraph (c)(1) of this section, including but not limited to weekly or monthly maintenance fees, non-activity fees, balance inquiry fees, and customer service call surcharges. The electronic fund may impose other fees that are beyond the purpose of DBC payment, such as foreign transaction fees for purchases with or withdrawal of currency other than U.S. dollars.

(4) Carriers must provide conspicuous written disclosure of all restrictions and conditions associated with using the electronic fund at the time the fund is tendered to the passenger, consistent with section 250.9(c).

4. Amend § 250.9 by revising paragraph (a), the “Method of Payment” section of paragraph (b), paragraph (c), and adding new paragraph (d) to read as follows:

**§ 250.9 Written explanation of denied boarding compensation and boarding priorities, and verbal notification of denied boarding compensation.**

(a) Every carrier shall furnish passengers who are denied boarding involuntarily from flights on which they hold confirmed reserved space immediately after the denied boarding occurs, a written statement explaining the terms, conditions, and limitations of denied boarding compensation, and describing the carriers' boarding priority rules and criteria. The carrier shall also furnish the statement to any person upon request at all airport ticket selling positions which are in the charge of a person employed exclusively by the carrier, or by it jointly with another person or persons, and at all boarding locations being used by the carrier. Carriers may furnish this written statement by electronic means, unless the recipient specifically requests receiving it in a printed format. Statement furnished by electronic means shall be immediately accessible by commonly used electronic devices such as mobile phones or tablets.

(b) \* \* \*

**METHOD OF PAYMENT**

Except as provided below, the airline must give each passenger who qualifies for involuntary denied boarding compensation a payment for the amount specified above, on the day and at the place the involuntary denied boarding occurs. The airline may choose to pay denied boarding compensation by cash, check, or electronic payments that are equivalent to cash payments. Denied boarding compensation paid by an electronic payment shall be in the amount specified above plus an additional amount, if appropriate, sufficient to cover any potential usage charges such as ATM withdrawal fees. The airline may not impose any other additional charges and fees for the use and maintenance of the electronic fund for at least 90 days from the date the fund becomes accessible to consumers. If the airline arranges alternate transportation for the passenger's convenience that departs before the payment can be made, the payment shall be sent to the passenger within 24 hours. The carrier may offer free or discounted transportation in place of the cash or cash equivalent payment. In that event, the carrier must disclose all material restrictions on the use of the free or discounted transportation before the passenger decides whether to accept the transportation in lieu of cash or cash equivalent payment. The passenger may insist on the required payment or refuse all compensation and bring private legal action.

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(c) In addition to furnishing passengers with the carrier's written statement as specified in paragraphs (a) and (b) of this section, if the carrier chooses to use cash equivalent electronic payments for denied boarding compensation payment, the carrier must disclose any material restrictions or conditions applicable to the payments to the involuntarily bumped passenger in writing at the time of tendering electronic funds. Carriers may provide this disclosure by electronic means, unless the recipient specifically requests receiving it in a printed format. Disclosure furnished by electronic means shall be immediately accessible by commonly used electronic devices such as mobile phones or tablets.

(d) If the carrier orally advises involuntarily bumped passengers that they are entitled to receive free or discounted transportation as denied boarding compensation, the carrier must also orally advise the passengers of any material restrictions or conditions applicable to the free or discounted transportation and that they are entitled to choose cash, a check, or electronic cash equivalent payment instead.

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